



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2023-0168]

RIN 1625-AA08

### Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of the Bush River and Otter Point Creek, in Maryland. This action is necessary to provide for the safety of life on these navigable waters located at Edgewood, MD during a high-speed power boat race on May 13, 2023 and May 14, 2023. This regulation prohibits persons and vessels (other than those already at berth at the time the regulation takes effect) from being in the regulated area unless authorized by the Captain of the Port, Sector Maryland-National Capital Region (COTP), or a designated representative.

**DATES:** This rule is effective from 9 a.m. on May 13, 2023, through 7 p.m. on May 14, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0168 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2596, email MDNCRWaterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On November 11, 2022, the Kent Narrows Racing Association (KNRA) notified the Coast Guard that it will be conducting the Harford County Spring Nationals Inboard Hydroplane Race on May 13, 2023 and May 14, 2023 from 9 a.m. to 7 p.m. on both days. The high-speed power boat racing event consists of approximately 60 participating racing boats – including composite and wood hull inboard hydroplanes – 12 to 28 feet in length. In response, on March 23, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD (88 FR 17467). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the high-speed power boat race. During the comment period that ended April 24, 2023, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the high-speed power

boat race scheduled to take place on May 13, 2023 and May 14, 2023.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event and for vessels that operate within the specified waters of the Bush River and Otter Point Creek. The purpose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published March 23, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a regulated area from 9 a.m. on May 13, 2023 through 7 p.m. on May 14, 2023. The regulated area will cover all navigable waters of the Bush River and Otter Point Creek, shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°21'15"N, longitude 076°14'39" W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N, longitude 076°13'57" W, and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. These boundaries are based on a detailed course map for the event which the Coast Guard received from the sponsor on March 7, 2023. The COTP, and the Coast Guard Event Patrol Commander (or "Event PATCOM," a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the COTP) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in

the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Harford County Spring Nationals participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at a safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the COTP with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed in a manner that minimizes wake while within the regulated area and that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while present within the regulated area. Only participant vessels and official patrol vessels will be allowed to enter the race area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small, designated area of the Bush River for a total of 20 enforcement hours. Although this regulated area extends across a large portion of the waterway, the rule will allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely will be able to transit the regulated area as instructed by the Event PATCOM. Such vessels must operate at a safe speed that minimizes wake and not loiter within the navigable channel while present within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 20 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the

docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0168 to read as follows:

#### **§ 100.T05-0168 Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD.**

(a) *Location.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N, longitude 076°14'39" W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N, longitude 076°13'57" W; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. The following locations are within the regulated area: The regulations in this section apply to the following area:

(2) *Race Area.* The area is bounded by a line commencing at position latitude



39°26'39.48" N, longitude 076°15'23.44" W, to latitude 39°26'36.52" N, longitude 076°15'13.33" W, to latitude 39°26'36.94" N, longitude 076°15'10.01" W, to latitude 39°26'38.59" N, longitude 076°15'07.41" W, to latitude 39°26'41.03" N, longitude 076°15'06.22" W, to latitude 39°26'43.61" N, longitude 076°15'06.76" W, to latitude 39°26'45.63" N, longitude 076°15'08.89" W, to latitude 39°26'47.93" N, longitude 076°15'16.76" W, to latitude 39°26'50.24" N, longitude 076°15'24.63" W, to latitude 39°26'49.81" N, longitude 076°15'27.95" W, to latitude 39°26'48.16" N, longitude 076°15'30.56" W, to latitude 39°26'45.72" N, longitude 076°15'31.75" W, to latitude 39°26'43.15" N, longitude 076°15'31.20" W, to latitude 39°26'41.13" N, longitude 076°15'29.07" W thence back to the beginning point.

(3) *Buffer zone.* The buffer zone surrounds the entire race area and is bounded by a line commencing at position latitude 39°26'39.60" N, longitude 076°15'30.00" W, to latitude 39°26'37.80" N, longitude 076°15'24.00" W, to latitude 39°26'34" N, longitude 076°15'14.40" W, to latitude 39°26'34.80" N, longitude 076°15'09.00" W, to latitude 39°26'37.20" N, longitude 076°15'05.40" W, to latitude 39°26'40.80" N, longitude 076°15'03.60" W, to latitude 39°26'44.40" N, longitude 076°15'04.20" W, to latitude 39°26'46.80" N, longitude 076°15'07.20" W, to latitude 39°26'49.80" N, longitude 076°15'15.60" W, to latitude 39°26'52.20" N, longitude 076°15'25.20" W, to latitude 39°26'51.60" N, longitude 076°15'28.80" W, to latitude 39°26'49.20" N, longitude 076°15'32.40" W, to latitude 39°26'45.60" N, longitude 076°15'34.20" W, to latitude 39°26'42.60" N, longitude 076°15'33.60" W thence back to the beginning point.

(4) *Spectator Area.* The spectator area is designated as the all waters immediately surrounding the buffer zone up to a distance of 500 feet immediately surrounding the buffer zone.

(b) *Definitions.* As used in this section—

*Buffer zone* is a neutral area that surrounds the perimeter of the race area within

the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and nearby transiting vessels. This area provides separation between a race area and other vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the regulations in this section.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as a participant or assigned as official patrols.

(c) *Regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section.

When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band

Radio, VHF–FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF– FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 7 p.m. on May 13, 2023 and from 9 a.m. to 7 p.m. on May 14, 2023.

Dated: May 5, 2023.

David E. O’Connell  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.

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